

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)
)
)
v.)
) No. 1:10-MJ-00479
THOMAS ANDREW TALLARICO) Hon. John F. Anderson
) Hearing Date: August 4, 2010
Defendant.)
)
)

DEFENDANT'S MOTION FOR EXPEDITED SENTENCING

Defendant Thomas Andrew Tallarico, by counsel, respectfully moves this Court to approve his request to waive preparation of a Presentence Report (“PSR”) and to sentence him immediately following the Court’s entry of a finding of guilt. In support thereof, Mr. Tallarico submits the following for the Court's consideration:

1. On August 4, 2010, Mr. Tallarico is scheduled to enter a guilty plea to a misdemeanor Criminal Information charging him with failing to report the importation of more than \$10,000 in cash, in violation of 12 U.S.C. § 1956. The possible penalties for this misdemeanor offense are: a maximum term of imprisonment of one (1) year, a fine of up to \$100,000, a special assessment of \$25, and up to one (1) year of supervised release.
2. In the Plea Agreement, copy attached,¹ both sides agree that, based upon the information available to the parties at this time, the appropriate advisory Sentencing Guidelines range is zero to six (0 to 6) months of incarceration. Plea Agmt ¶ 4. In fact, assuming that this Court

¹ Attached at Exhibit 1 is a copy of the Plea Agreement and Statement of Facts.

finds that he has accepted responsibility for his actions, Mr. Tallarico's final offense level will be only 4 points; because Mr. Tallarico has no criminal history, any offense level below level 8 results in an advisory guidelines range of 0-6 months.

3. In addition to any sentence handed down by this Court, Mr. Tallarico has agreed to forfeit \$102,000, which was seized from him at Dulles Airport on October 9, 2009.
4. Mr. Tallarico takes full responsibility for his actions. As the Statement of Facts notes, on October 9, 2009, Mr. Tallarico carried nearly \$104,000 in cash into the United States without declaring it to the U.S. Customs officials at Dulles Airport. This decision, which Mr. Tallarico regrets deeply and for which he accepts full responsibility, resulted from his desire to make a short flight connection, something that Mr. Tallarico believed might have been more difficult had he been required to go through the full Customs processing. The funds in question were earned entirely lawfully, as the result of Mr. Tallarico's concert performances in Brazil.
5. Because of the parties' agreement to all of the relevant issues in this matter, there are no issues here that require the U.S. Probation Office to conduct a pre-sentence investigation, the delay occasioned by the preparation of a PSR is unnecessary. Moreover, the seizure of the funds in question — which he does not contest — has had a devastating effect on Mr. Tallarico's professional and personal finances. Forcing him to return to the east coast for an additional proceeding would cause unnecessary financial hardship in a circumstance in which there is no need to tap the Probation Office's resources.
6. Preparation of a PSR is not necessary if "the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the

court explains its finding on the record.” Fed. R. Crim. Pro. 32(c)(1)(A)(ii). *See also Hazelwood v. Arnold*, 539 F.2d 1031, 1033-34 (4th Cir. 1976) (the ordering of a presentence report is discretionary and a defendant may waive the preparation of such a report) (*per curium* opinion); *United States v. Bosciano*, 499 F.2d 166, 169 (7th Cir. 1974) (affirming district court’s decision not to order a PSR where the reasons to do so were clearly stated on the record). In this instance, the defense respectfully submits that there are no issues requiring the drafting of a PSR.

7. As a result, Mr. Tallarico waives his right to the preparation of a PSR and respectfully requests that this Court sentence him to a non-custodial sentence and, if this Court believes it necessary, a period of supervised release under conditions that would permit him to continue his active tour schedule.
8. Mr. Tallarico will be prepared to allocute more fully in support of this sentencing recommendation at the appropriate time. However, in advance of his hearing, he requests that the Court note that he has no criminal history and that he has an extremely low guidelines range. Moreover, Mr. Tallarico has led an exemplary life. He began his career homeless in Southern California, hoping for some kind of break in the music industry. By virtue of his work ethic, he took on multiple jobs, including one at a video games manufacturer. Through that work, Mr. Tallarico began composing music for video games, and he is now widely considered the leading composer of music for video games. Over the last twenty years, Mr. Tallarico has composed music for more than 275 video games and has earned forty-five industry awards.
9. In 2002, Mr. Tallarico and a former business partner founded Video Games Live (“VGL”),

an immersive concert event that features music from the world's most popular and well-known video games. After spending three years designing, building and implementing this concert series, VGL debuted on July 6, 2005, at the Hollywood Bowl, in a performance which also featured the Los Angeles Philharmonic Orchestra.

10. Since the first VGL concert in 2005, Mr. Tallarico has been touring around the world, performing in as many as fifty-five shows a year (with the exception of 2010) in venues throughout Europe, Asia and South America. As the VGL concert creator, producer, host and guitar player, Mr. Tallarico plays an integral role in nearly every aspect of every performance, including as the show's lead performer and "front man."
11. Well aware of his good fortune, Mr. Tallarico has also given back to his community on countless occasions, with causes of particular interest including the homeless community, the video game industry and animal rights. Mr. Tallarico is the founder and Chief Executive Officer of the Game Audio Network Guild ("G.A.N.G."), a non-profit dedicated to educating people about interactive audio by providing information, instruction, resources and guidance to members, content providers and listeners throughout the world. Among other things, G.A.N.G. administers a \$20,000 annual scholarship fund to give young, rising stars the opportunity to learn and develop interactive audio talent. Because of his work for G.A.N.G., Mr. Tallarico received the "Ambassador Award" at the 9th Annual Game Developers Choice Awards in 2009. This is only the second time in the forty-year history of the game industry that such an award was bestowed. (Game Developers Choice Awards, <http://www.gamechoiceawards.com/archive/ambassador.htm> (last visited July 28, 2010).)
12. Mr. Tallarico also is on the Board of Directors of Hollywood Arts, a non-profit full-service

educational facility that offers free art and music classes to homeless youths as a starting point to move students to community college, internships and jobs in the creative sector. (Hollywood Arts Board of Directors, <http://www.hollywood-arts.org/board.php> (last visited July 28, 2010).) As the result of his contributions, which include raising over \$100,000 to start the facility for homeless teens, in 2007 Hollywood Arts chose Mr. Tallarico as the first honoree and recipient for their now annual Dream Awards.

13. While on tour with VGL in the U.S. and abroad, Mr. Tallarico regularly schedules volunteer speaking engagements with kids and teens at local arts universities and music programs. Some recent examples over the past few years include speaking to students at the Hualong Institute of DigiArt (in China), Berklee College of Music (in Boston), Flashpoint Academy (in Chicago) and Yale University. (*See, e.g.,* Berklee College of Music, http://www.berklee.edu/news/2008/03/video_games.html (last visited July 28, 2010); Yale University Office of Public Affairs, “Video Games Live is Coming to Yale University,” <http://opa.yale.edu/news/article.aspx?id=2459> (last visited July 28, 2010).)
14. Mr. Tallarico’s charitable works are not limited to the music and video game worlds; he has also supported many causes related to animals as both an activist and fundraiser. Aside from being a vegan and regularly donating money to a number of animal rights-related charities, Mr. Tallarico also supports issues in this area as a spokesperson for PETA (People for the Ethical Treatment of Animals) and as an active member of an array of animal organizations.
15. Accordingly, Mr. Tallarico respectfully requests this Honorable Court to dispense with the Presentence Report and to sentence him immediately following the Court’s imposition of a finding of guilt.

Dated: July 29, 2010

Respectfully submitted,

THOMAS ANDREW TALLARICO
By Counsel

/s/ Samantha Gingold Guilder

Samantha Gingold Guilder (Va. Bar No. 73817)

Samuel G. Williamson (*pro hac vice*)

KIRKLAND & ELLIS LLP

655 Fifteenth Street, N.W.

Washington, D.C. 20005

Telephone: (202) 879-5000

Facsimile: (202) 879-5200

Email: sguilder@kirkland.com

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2010, I will electronically file the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Manasi Venkatesh
United States Attorney's Office (Alexandria)
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3700
Fax: *N/A*
Email: manasi.venkatesh@usdoj.gov

Pursuant to the Electronic Case Filing Policies and Procedures, a courtesy copy of the foregoing pleading will be delivered to Chambers within one business day of the electronic filing.

/s/ Samantha Gingold Guilder

Samantha Gingold Guilder (Va. Bar No. 73817)
Samuel G. Williamson (*pro hac vice*)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200
Email: sguilder@kirkland.com